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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

GOOGLE LLC,

Plaintiff and Counter-defendant,

v.

SONOS, INC.,

Defendant and Counter-claimant.

Case No. 3:20-cv-06754-WHA
Related to Case No. 3:21-cv-07559-WHA

**SONOS, INC.'S RESPONSE TO
COURT'S ORDER ON MOTION FOR
RECONSIDERATION (DKT. 539)**

Complaint Filed: September 28, 2020

1 Sonos provides the following views on how to proceed on the issues in the pending
2 summary judgment motions. Dkt. 539 (Order on Motion for Reconsideration).

3 No additional summary judgment briefing is needed.¹ Despite the Court's prior order
4 finding claim 1 of the '885 patent not invalid, Google moved for summary judgment that claim 1
5 of the '885 patent is invalid as obvious. Dkt. 483 at 15 (Google's MSJ Br.) ("Claim 1 of the '885
6 patent and all asserted claims of the '966 patent are invalid as obvious...") (footnote omitted); Dkt.
7 538 at 7 (Google's MSJ Reply Br.). To the extent the Court considers all four of Google's motions
8 for summary judgment, *but see* Dkt. 508 (Sonos's MSJ Opp. Br.) at 1, the Court should do so on
9 the briefing Google already submitted. Google did not request any additional briefing or pages to
10 make its arguments and the Court's prior order did not stop Google from briefing summary
11 judgment of invalidity of the '885 patent. *See* Dkt. 483 (cursorily briefing four separate summary
12 judgment motions in 25 pages).

13 Sonos's response to Google's motion that the '885 and '966 patents were invalid as obvious
14 focused primarily on the '966 patent because the Court had already found that the '885 patent was
15 not invalid. Dkt. 508 at 10-19. Had Sonos known that invalidity of the '885 patent was still at
16 issue, Sonos would have cited additional expert evidence related to objective indicia of
17 nonobviousness of the '885 patent. That evidence parallels the objective indicia of nonobviousness
18 for the '966 patent which was cited and attached to Sonos's opposition to Google's motion. *See id.*
19 at 19, citing Ex. K to Sonos's Opp. to Summary Judgment (Almeroth Reb.), ¶¶1613-1640. In any
20 event, Google's moving papers utterly failed to address objective indicia of nonobviousness, and
21

22 ¹ In view of the Court's ruling, Sonos's expert Dr. Kevin Almeroth will submit a supplemental
23 rebuttal report further addressing validity of the '885 Patent. At the time Dr. Almeroth submitted
24 his rebuttal report on January 13, 2023, the validity of the '885 patent was not at issue and
25 therefore was not addressed in his rebuttal report. Dr. Almeroth stated that "to the extent that Dr.
26 Schonfeld is permitted to offer any opinions regarding the validity of the '885 Patent at the
27 upcoming trial, I hereby incorporate my May 19, 2022 reply declaration and my '885 Rebuttal
28 Report, and I also expressly reserve the right to supplement my opinions and analyses to address
any new opinions or analyses that Dr. Schonfeld is now offering regarding the alleged invalidity
of the '885 Patent." January 13, 2023 Rebuttal Expert Report of Dr. Kevin C. Almeroth ¶¶ 33,
474. Sonos will provide an excerpt of Dr. Almeroth's January 13, 2023 Rebuttal report at the
Court's request. Sonos does not anticipate any need to delay trial or pretrial exchanges to
accommodate Dr. Almeroth's supplemental rebuttal report.

1 its reply brief did not distinguish between the two patents for purposes of invalidity. Dkt. 483 at
2 15-20; Dkt. 538 at 10-11. To the extent the Court wishes to review the additional expert evidence
3 on the '885 patent, which was developed in preparation for the showdown trial, Sonos will lodge it
4 with the Court upon request.

5 In the meantime, Sonos looks forward to the March 30th hearing, at which it will show that
6 Google's motions for summary judgment should be denied and Sonos's motion (related to Google's
7 state law breach of contract and conversion claims) should be granted.

8
9 Dated: March 6, 2023

By: /s/ Clement S. Roberts

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